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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

21 CR 636 (JPC)

6 RICARDO CRUCIANI,

7 Defendant.

Arraignment

8 -----x
9 New York, N.Y.
10 October 21, 2021
11 9:45 a.m.

12 Before:

13 HON. JOHN P. CRONAN,

14 District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS,
17 United States Attorney for the
18 Southern District of New York
19 JANE KIM
20 Assistant United States Attorney

21 FREDERICK L. SOSINSKY
22 ELIZABETH MACEDONIO
23 Attorneys for Defendant

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, starting with the
3 government, please state your name for the record.

4 MS. KIM: Good morning, your Honor.

5 Jane Kim for the government.

6 THE COURT: Good morning, Ms. Kim.

7 MS. MACEDONIO: Good morning, your Honor.

8 Elizabeth Macedonio and Fred Sosinsky for
9 Mr. Cruciani.

10 MR. SOSINSKY: Good morning, your Honor.

11 THE COURT: Good morning, Ms. Macedonio and
12 Mr. Sosinsky. And good morning, Mr. Cruciani.13 We are here for the defendant Ricardo Cruciani's
14 arraignment and his initial pretrial conference.15 Ms. Kim, I understand that the defendant was presented
16 yesterday before Judge Lehrburger; is that right?

17 MS. KIM: Yes, your Honor.

18 THE COURT: And also just as a quick initial matter, I
19 know it's a brand-new case, but just a reminder, Ms. Macedonio
20 and Mr. Furman, too, if he's appearing, I believe he called
21 chambers to file a notice of appearance, when you have a
22 chance.

23 MS. MACEDONIO: Will do. Thank you, Judge.

24 THE COURT: Before we turn to the defendant's
25 arraignment, as I typically do in criminal cases, I want to put

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1 on the record my prior work before taking the bench.

2 Before I was confirmed to the district court, I worked
3 at the United States Department of Justice. I was a prosecutor
4 in the U.S. Attorney's Office for the Southern District of New
5 York, which, of course, is Ms. Kim's and Ms. Kelly's, the other
6 prosecutor in this case, their office. I worked there in the
7 criminal division of the U.S. Attorney's Office from around
8 March 2007 to August 2017. After that point, I worked at the
9 Department of Justice's criminal division until around August
10 2020, when I was confirmed for my current position.

11 The indictment was filed, of course, after I left the
12 Department of Justice, but it alleges conduct that went back
13 for decades and, therefore, alleges at least for 15 years or so
14 and, therefore, alleges allegations of conduct that took place
15 while I was at the Department of Justice.

16 I reviewed the indictment. I'll ask Ms. Kim as well,
17 but I'm aware of no involvement that I had in this
18 investigation in any capacity while I was at the Department of
19 Justice, including consulting on the investigation, supervising
20 any part of the investigation, approving any investigative
21 techniques, or any role whatsoever.

22 But, Ms. Kim, let me ask you that question as well.
23 Is that your understanding, too? Are you aware of any
24 involvement that I had in this investigation?

25 MS. KIM: Your Honor, that's my understanding. I'm

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1 not aware of any involvement that you had in this
2 investigation.

3 THE COURT: And let me just ask a couple of more
4 specific questions.

5 Were there any Title III wiretaps in this case?

6 MS. KIM: No, your Honor.

7 THE COURT: And what about any investigative
8 techniques that might have required approval or consultation
9 with the Office of Enforcement Operations?

10 MS. KIM: No, your Honor.

11 THE COURT: Thank you.

12 Let me also put on the record that I overlapped at the
13 U.S. Attorney's Office with Ms. Kim and Ms. Kelly. I don't
14 recall working any cases with Ms. Kelly. I did work with
15 Ms. Kim for a bit. I supervised her in her former unit I think
16 for about a year before I left to work in the Department of
17 Justice.

18 Ms. Macedonio, I believe -- I'm not sure if we had
19 matters together; I certainly recall you and your fine
20 reputation for being an excellent advocate and defense counsel.
21 I don't think I had any matters with Mr. Sosinsky or
22 Mr. Furman. But, anyway, long way of saying that -- putting on
23 the record my background, I do not see any reason right now why
24 I cannot preside over this case. But if any party thinks
25 otherwise, you're certainly welcome to make a motion that I

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1 would consider. I would just ask that any motion be made, to
2 the extent possible, within two weeks so we can be sure to keep
3 this case moving at an appropriate speed.

4 So Ms. Kim, let me ask you a little bit more about the
5 defendant's arrest. When and where was he arrested?

6 MS. KIM: Your Honor, the defendant was arrested
7 yesterday morning at approximately 7:30 a.m. in Pocono Pines,
8 Pennsylvania.

9 THE COURT: And obviously the defendant was detained
10 yesterday. Was there a bail argument before Judge Lehrburger?

11 MS. KIM: There wasn't, your Honor. The parties
12 agreed to certain bail conditions, and the defendant will be
13 detained until he can meet certain of those bail conditions.

14 THE COURT: And can you tell me about those bail
15 conditions?

16 MS. KIM: Certainly, your Honor.

17 The defendant will be released on a \$2 million bond
18 secured by three properties: one in New Jersey, one in
19 Pennsylvania and one in the Poconos. The \$2 million bond will
20 also be secured by three financially responsible cosigners.
21 The defendant will be placed on home incarceration enforced by
22 location monitoring. He will be under pretrial supervision.
23 He will not have contact with potential witnesses or victims.

24 He will surrender his travel documents and make no new
25 applications. His travel will be restricted to the Southern

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1 District of New York for court or meetings with lawyers, to the
2 Eastern District of New York for meetings with lawyers, to the
3 District of New Jersey for court or meetings with lawyers, and
4 to the Eastern District of Pennsylvania where he will reside.

5 He will not use any controlled substances, and he will
6 obtain a mental health evaluation and treatment if determined
7 that those are necessary by pretrial services.

8 He shall be detained until all of these conditions are
9 met, with the exception of securing the three properties. And
10 he shall secure those three properties by or before next
11 Friday, October 29th.

12 THE COURT: Thank you.

13 And were those conditions accurate from the
14 defendant's perspective?

15 MR. SOSINSKY: Yes, your Honor.

16 THE COURT: If there comes a point where there's a
17 request to modify any of those conditions, that request should
18 come to me.

19 Let's turn now to the defendant's arraignment.

20 Mr. Sosinsky, have you received a copy of the
21 indictment charging your client?

22 MR. SOSINSKY: We have, sir.

23 THE COURT: And have you had a chance to review it
24 with your client?

25 MR. SOSINSKY: Yesterday my colleague Mr. Furman went

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1 over the indictment word-by-word with Mr. Cruciani.

2 THE COURT: Thank you for that.

3 And Mr. Cruciani, is that right? Have you had the
4 chance to review the indictment?

5 THE DEFENDANT: Yes, that is correct.

6 THE COURT: So you are charged in indictment number 21
7 CR 636 in five counts. Each of those counts charges that you
8 knowingly persuaded, induced, enticed, and coerced an
9 individual to travel in interstate and foreign commerce to
10 engage in sexual activity for which a person can be charged for
11 a criminal offense. That would be in violation of Title 18,
12 United States Code, Sections 2422(a) and 2.

13 Each count alleges a different victim.

14 Count One alleges conduct from approximately 2002 to
15 2003; Count Two alleges conduct from approximately 2003 to
16 2004; Count Three and, I believe, also Count Four alleges
17 conduct from 2006 to 2014; and lastly, Count Five alleges
18 conduct from 2008 to approximately 2017.

19 And the indictment contains a forfeiture allegation as
20 well.

21 Mr. Cruciani, do you waive the indictment's public
22 reading? In other words, do you wish for me to read the entire
23 indictment to you?

24 THE DEFENDANT: Yes, we wish.

25 MR. SOSINSKY: That was yes, we would waive.

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1 THE COURT: Yes, we would waive. Thank you.

2 And Mr. Sosinsky, do you wish to enter a plea on
3 behalf of your client?

4 MR. SOSINSKY: We do. And that plea will be not
5 guilty to the indictment, sir.

6 THE COURT: To all five counts, I assume?

7 MR. SOSINSKY: Yes, sir.

8 THE COURT: The Court will enter a not guilty plea for
9 the defendant.

10 Let me go back to Ms. Kim.

11 Ms. Kim, can you give me an overview of this case, the
12 alleged conduct that gave rise to the charges, and also a
13 summary of the category and volumes of materials that the
14 government expects to produce in discovery pursuant to Rule 16.

15 MS. KIM: Yes, your Honor.

16 As the Court has explained, the defendant is charged
17 in five counts with enticement. The defendant was a pain
18 management doctor for nearly two decades. He was employed by
19 at least three prominent medical institutions: One in New
20 York, one in New Jersey, and one in Pennsylvania.

21 In his capacity as a pain management doctor, he
22 treated patients who suffered from severe and chronic pain and
23 were extremely vulnerable. He managed their pain medication,
24 including prescriptions for highly addictive medication like
25 opioids.

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1 The defendant sexually abused numerous of these
2 patients over the course of at least 15 years and across
3 multiple states. And he enticed some of these victims to
4 travel across state lines so that he could sexually abuse them.
5 Five of those victims are statutory victims, as referenced in
6 the indictment.

7 In terms of the discovery and the government's
8 evidence in this case, the discovery consists of subpoena
9 returns; medical records pertaining to the victims referenced
10 in the indictment, as well as other victims and other patients;
11 other documents obtained from the defendant's former employers.

12 Two search warrants have been executed in the case,
13 one was a GPS ping for the defendant's location and one is a
14 search warrant for the defendant's email.

15 We have not yet received the returns for the
16 defendant's email, but we have communicated with defense
17 counsel about how we will approach a potential privilege review
18 of those materials.

19 The evidence also includes law enforcement reports.

20 We have been in communication with the defense about a
21 potential protective order, and we are hoping to submit a
22 proposed stipulated protective order to the Court this week, if
23 not today. And then to begin producing discovery to the
24 defendant in short order after we receive a hard drive.

25 THE COURT: And in terms of how long production of

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1 discovery will take, what is the government's estimate?

2 MS. KIM: Apart from the email search warrant returns
3 which we have not yet obtained, we believe we'll be able to
4 produce these materials, technology permitting, within a few
5 weeks.

6 THE COURT: And Mr. Sosinsky, does that schedule work
7 for the defendant?

8 MR. SOSINSKY: The schedule as such works for us.

9 But having had some experience in some of the other
10 litigation involved in this case, I can tell you that many of
11 the medical records pertaining to identified complainants or
12 victims can be extremely voluminous, especially the ones who
13 may have treated with Mr. Cruciani, and some of his colleagues
14 for decades as the Court outlined. So we're looking forward to
15 receiving it and we will do everything to allow that to move
16 along quickly.

17 But it will be our suggestion, sir, if we could, that
18 we come back before the Court in about 60 days and identify for
19 you how we're doing in terms of both receiving and beginning to
20 review that discovery. And if there are any issues that are
21 arising that are preventing an efficient review of those --

22 THE COURT: I think that that would make sense.

23 Ms. Kim, it sounds like the volume will be -- the
24 amount will be somewhat voluminous?

25 MS. KIM: Yes, your Honor.

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1 THE COURT: And Mr. Sosinsky, you touched on a
2 question I was going to ask. And I don't know if it's better
3 for you or for Ms. Kim or Ms. Macedonio, for that matter.

4 What is the status of any other cases?

5 MR. SOSINSKY: Sure, your Honor.

6 If I could, I'll begin.

7 THE COURT: Sounds good.

8 MR. SOSINSKY: I'm involved in one of them. I'm not
9 sure that Ms. Kim is.

10 There is a criminal prosecution going on in state
11 supreme court in New York County here in Manhattan. That case
12 has been pending for quite some time. We have had a couple of
13 tentative trial dates that got moved because, among other
14 reasons, the courthouse in New York County -- and I think it's
15 the case throughout the city -- the courthouse is still not
16 prepared to engage in a projected lengthy trial. The parties
17 there estimate, between jury selection, questionnaires, and
18 whatnot, and the number of anticipated witnesses, that trial
19 could be three, four weeks going, and they are just not doing
20 that yet. So the expectation is in the spring that trials of
21 that nature may go forward, and that is our hope with regard to
22 that.

23 There is a separate criminal proceeding in New Jersey
24 that we're not directly involved with that I think suffers from
25 some of the same scheduling issues in terms of length of trial

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1 and, with COVID, being prepared to move forward with that.

2 Again, we're not --

3 THE COURT: Is that New Jersey state court?

4 MR. SOSINSKY: Yes. I'm sorry, if I wasn't clear,
5 yes.

6 And my understanding is that through communication
7 with counsel, that that case, the court has agreed, would trail
8 the New York County trial, which were not for the pandemic I
9 think would have clearly taken place by now.

10 Those are two pending criminal prosecutions.

11 There are also, as the Court may or may not be aware,
12 lawsuits in at least three states that have been brought
13 against our client, as well as the medical -- the hospitals,
14 the medical centers at which he worked. We're not yet aware of
15 who the complainants are in this case, but I can tell you that
16 with regard to the criminal prosecution in the other states,
17 nearly all of the complainants in those cases have initiated
18 lawsuits seeking millions of dollars from the hospitals and Dr.
19 Cruciani.

20 I'm not aware of who the complainants are here, so I
21 can't tell you about whether there are companion lawsuits. We
22 anticipate probably learning that there are, but those lawsuits
23 have been also going on for a number of years, sir. So that's
24 what I know about that litigation.

25 THE COURT: That is very helpful. Thank you.

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1 Ms. Kim, anything you wish to add with any of that?

2 MS. KIM: No. That's consistent with our
3 understanding.

4 I would just add that there is also a case in
5 Pennsylvania, a state case, and that was brought in or about
6 2017. The defendant pled to seven misdemeanors there and was
7 sentenced to probation and he's currently on probation there.

8 THE COURT: Thank you.

9 Taking one step back to discovery and -- I'm sorry,
10 Mr. Sosinsky, anything?

11 MR. SOSINSKY: Judge, I was addressing what I thought
12 was open matters. Forgive me, I certainly --

13 THE COURT: Oh, is there more?

14 MR. SOSINSKY: No. I was well aware of the
15 Pennsylvania matter; that's one of the states where there are
16 civil lawsuits.

17 But just with regard to the discovery that the
18 government outlined and Ms. Kim made mention, with regard to
19 the return on search warrants for emails, obviously as a result
20 of a number of investigations going on in various
21 jurisdictions, Mr. Cruciani has retained counsel to handle both
22 administrative, civil, criminal matters. We've discussed this
23 preliminarily with the government, but we're obviously very
24 concerned that electronic mail, electronic communications
25 between our client and any of a number of different law firms

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1 and attorneys in various jurisdictions not be reviewed by their
2 office. And we've talked preliminarily about how to manage
3 that so as to avoid the avoidable. But that is a real issue
4 here, and hopefully not the subject of litigation.

5 THE COURT: That makes sense. Hopefully everyone will
6 be able to work out the privilege review. But if you need
7 intervention from me, obviously you know how to reach me.

8 MR. SOSINSKY: And the other thing is -- and I'm just
9 raising this now in the hopes that we don't have to write on
10 it, Judge, but my understanding is that the proposed protective
11 order that the government will shortly be sending to us for our
12 review would prevent Mr. Cruciani from reviewing some, if not
13 the majority, of the records on his own.

14 Your Honor knows that pursuant to the bond that was
15 set, when he's released, he's going to be, in essence, at his
16 home. And it is our hope, first, that we can agree; but if
17 not, that the Court will understand under those
18 circumstances -- and he doesn't live here in town -- that it
19 makes sense, given the allegations in this case, to allow him
20 here in 2021 to review medical records, patient records of
21 people who he treated, who his colleagues treated, who were
22 patients of the hospital, on his own that can help us, and then
23 we can meet and confer with him to better understand what the
24 records show and whatnot.

25 And that if anything, whatever else can be said,

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1 Judge, the fact that there's been four years of litigation in
2 the jurisdictions that I've told you about, where this was not
3 an issue and no one has complained about harassment or
4 obstruction or anything like that that should give the Court, I
5 think, some relief that there's really no good argument in this
6 case why he shouldn't be able to assist us by going through
7 this stuff on his own.

8 We're here in New York City. Your Honor is aware of
9 where he resides. I don't think there's going to be any good
10 reason why he shouldn't be able to review these things. And if
11 there's a particular class of records that poses particular
12 concerns, we can address it.

13 THE COURT: Understood.

14 This may not be ripe yet, since you are still
15 discussing the protective order, but I certainly appreciate
16 what you're saying, especially given that he is in a different
17 state and we do want this case to move forward at an
18 appropriate pace.

19 But, Ms. Kim, do you agree, I will let you and counsel
20 try to see if you can work out an agreeable protective order?

21 MS. KIM: Yes, your Honor. Thank you.

22 THE COURT: So on the topic of disclosure obligations
23 and discovery, one other matter to put on the record.

24 As the parties, I'm sure, know, last October, about a
25 year ago, the former president signed into law the Due Process

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1 Protections Act. That statute has provisions that amend Rule 5
2 of the Federal Rules of Criminal Procedure, such that Rule 5(f)
3 now requires me to remind the parties of the prosecutor's
4 obligation under the Supreme Court decision in *Brady v.*
5 *Maryland*.

6 Pursuant to that statute and pursuant to Rule 5(f), I
7 direct the prosecution to comply with its obligations under
8 *Brady v. Maryland* and that case's progeny to disclose to the
9 defense all information, whether admissible or not, that is
10 favorable to the defendant, material to either guilt or to
11 punishment, and known to the prosecution. Possible
12 consequences for noncompliance may include dismissal of
13 individual charges or the entire case, exclusion of evidence,
14 and professional discipline or court sanctions on the attorney
15 or attorneys responsible.

16 After this proceeding, I will enter on the docket a
17 written order in this case, as I typically do. And that order
18 will more fully describe this obligation and the possible
19 consequences of failing to meet it. And I direct Ms. Kim, the
20 prosecution, and both yourself and any of your colleagues on
21 this case, to review and comply with that order.

22 But for now, does the prosecution confirm that it
23 understands its obligations and will fulfill them?

24 MS. KIM: Yes, your Honor, we understand.

25 THE COURT: So let's set a date for a next conference.

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1 Mr. Sosinsky, I think about 60 days out makes sense.
2 That would bring us to around December 20th.

3 How is December 20th at 2 p.m. for the parties?

4 MS. KIM: That works for the government, your Honor.

5 MS. MACEDONIO: Your Honor, I happen to have a
6 sentencing on that date. Would it be possible just to do this
7 right after the new year?

8 THE COURT: I think that would be fine, given the
9 volume of discovery here, assuming it's a request from the
10 defendant.

11 MR. SOSINSKY: Yes, sir.

12 THE COURT: How is January 4th at 2 p.m. for the
13 parties?

14 MS. MACEDONIO: That's fine. Thank you, your Honor.

15 MS. KIM: That works for the government. Thank you.

16 THE COURT: Oh, great.

17 I gave a specific date and time, although we are still
18 in a situation where I cannot schedule definitively court
19 appearances if the defendant remains in custody. I assume by
20 then he will have met his bail conditions and will no longer be
21 in custody, so we could rely on that date and time.

22 If for whatever reason he is not at liberty on that
23 date, we'll confirm closer to that date and time that it is
24 going forward at 2 p.m. But I expect obviously that he will be
25 released by then.

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1 At that conference, of course, I'll ask defense
2 counsel as to a status of their review of discovery and whether
3 you are in a position to report on any anticipated motions. I
4 very well may set a motion schedule and a trial date at that
5 conference. Although I do appreciate the challenges posed by
6 the pandemic in reviewing discovery, especially the volume at
7 issue in this case. So we'll see where we are on January 4th.

8 As the parties, I think, know, if for whatever reason
9 a resolution is reached in this case, please reach out to
10 Ms. Henrich and we'll schedule the appropriate proceeding
11 before me.

12 I believe that covered everything I wanted to address
13 this morning. Is there anything else from the parties? I'll
14 start with the defendant.

15 MS. MACEDONIO: Your Honor, may I have a moment with
16 the attorney for the government?

17 THE COURT: You may.

18 (Counsel conferred)

19 MS. MACEDONIO: Your Honor?

20 THE COURT: Yes.

21 MS. MACEDONIO: Mr. Cruciani is being held at the
22 Essex County Jail in New Jersey. Since the bond has been
23 issued and since he needs to personally sign, we're asking that
24 the marshals afford him the opportunity to sign the bond today,
25 even though he won't be released until the additional

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1 conditions are met. The interviews of the suretors are going
2 to be done by telephone, so that can be expedited. But if he
3 can sign the bond today and perhaps remain in the building in
4 the event that we are able to satisfy those conditions, there's
5 a possibility that he might be able to be released today.

6 THE COURT: Let me ask first the marshals if that's
7 even possible, because I don't know what the transport
8 situation is like with Essex.

9 Do you know if that's even a possibility?

10 THE MARSHAL: Your Honor, if I may. He usually is the
11 last person to sign the bond. Once he signs, we do our
12 administration on our end. And then after all that's cleared,
13 that's when the defendant will be released. So usually we'll
14 have the three or two cosigners sign. All that is done
15 logistically before he has the opportunity to sign.

16 He could stay in the building if he's potentially
17 going to get released today. We usually try to take back,
18 since he's an early court, we try to do two runs just so they
19 are not sitting here all day. But if he has the potential of
20 getting out, we'll talk to the supervisor in the criminal
21 section so he can wait around a little longer than usual.

22 THE COURT: I appreciate that. Thank you.

23 I completely defer to the marshals as to what can or
24 cannot be done. But if it's possible for the supervisor to
25 approve him, to wait until the last return to Essex, so if we

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1 can see if the conditions are met, that would be great.

2 Although he should not sign the bond until all the cosigners
3 have signed the bond. But thank you very much.

4 Appreciate that.

5 MS. MACEDONIO: Thank you, your Honor.

6 THE COURT: Thank you.

7 Anything else from the government or an application?

8 MS. KIM: Yes, your Honor.

9 The government respectfully requests that the Court
10 exclude time from today until January 4th, 2022. The exclusion
11 of time would be in the interest of the public, because it
12 would allow the defense to review discovery and for the parties
13 to discuss any potential pretrial dispositions.

14 THE COURT: And Mr. Sosinsky or Ms. Mass?

15 MR. SOSINSKY: No objection, sir.

16 THE COURT: I will exclude time from today until the
17 next conference on January 4th, 2022, pursuant to Title 18,
18 United States Code, Section 3161(h)(7)(A).

19 I find that the ends of justice served by excluding
20 such time outweigh the interests of the public and the
21 defendant in a speedy trial. And those are for the reasons
22 that Ms. Kim just mentioned: to allow the review of discovery
23 by the defendant and his attorneys, discovery should be
24 produced within the next few weeks; and also to allow the
25 parties to discuss any resolution of this matter.

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1 Are there any other matters that the parties wish to
2 take up this morning?

3 MS. KIM: No, thank you, your Honor.

4 MS. MACEDONIO: No, thank you, Judge.

5 THE COURT: Thank you.

6 This conference is adjourned.

7 I will see the parties and the defendant again on
8 January 4th.

9 Have a good day.

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